

STATE OF NEVADA
LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF)
TEAMSTERS, LOCAL 14, AFL-CIO,) CASE NO. A1-045735
Petitioner,)

vs.) **ORDER**

CLARK COUNTY SCHOOL DISTRICT, and) ITEM NO. 520Q
EDUCATION SUPPORT EMPLOYEES)
ASSOCIATION,)
Respondents.)

EDUCATION SUPPORT EMPLOYEES)
ASSOCIATION,)
Counter Claimant,)

vs.)

INTERNATIONAL BROTHERHOOD OF)
TEAMSTERS, LOCAL 14, AFL-CIO, and)
CLARK COUNTY SCHOOL DISTRICT,)
Counter Respondents.)

On February 11 and 12, 2015, this matter came on before the State of Nevada, Local Government Employee Management Relations Board ("Board") for consideration and decision pursuant to the provisions of the Local Government Employee-Management Relations Act ("the Act") and NAC Chapter 288.

Certification of Runoff Election Results

The Commissioner has conducted the runoff election in this matter. The election was conducted by secret ballot as required by NRS 288.160(4). The ballots were mailed to eligible employees in the Clark County School District support staff bargaining unit on January 5, 2015. The ballots were retrieved and counted on February 3, 2015. No party has filed an objection to the conduct of the election or to conduct affecting the results of the election. See NAC 288.110(8).

1 The Board reviewed the Tally of Ballots prepared by the Commissioner, which is
2 attached hereto. No timely objections having being filed, the Board will certify the results of the
3 election as reported on the Tally of Ballots.

4 Implications of Runoff Election Results

5 Having certified the results of the runoff election, the Board looks to the implications of
6 this runoff election. This runoff election was mandated by an order of the Nevada Supreme Court
7 entered on December 21, 2009. That order concluded that this runoff election was subject to a
8 majority vote requirement such that in order to prevail an employee organization needed “to
9 obtain support from a majority of all of the members of the bargaining unit and not just a
10 majority of those who vote.” This order, in turn, referred to a prior decision from the Nevada
11 Supreme Court that had affirmed this Board’s decision in Item No. 520F that interpreted our own
12 election regulation as requiring this standard.

13 The bargaining unit, as reported by the Commissioner, included a total of 11,114
14 employees. The Tally of Ballots indicates that neither the Education Support Employees (ESEA)
15 nor the International Brotherhood of Teamsters, Local 14 (Local 14) received the requisite
16 number of votes required to achieve a majority of members of the bargaining unit under this
17 standard. The Tally of Ballots shows that only 5,255 ballots were cast. Of those ballots, 3,692
18 were cast in favor of Local 14 and 1,498 were cast in favor of ESEA. In the same 2009 order, the
19 Nevada Supreme Court stated that election results are inconclusive where the “majority of the
20 unit” standard is not met. ESEA is the incumbent bargaining agent and has remained as such for
21 the duration of this election process. The results of this runoff election do not justify removing
22 ESEA in favor of Local 14 under the majority vote requirement imposed in the Supreme Court’s
23 2009 order. As such ESEA will continue as the recognized bargaining agent.

24 As with the original vote, the results of the runoff election do not provide a conclusive
25 result, neither organization having received the required majority of the bargaining unit. NAC
26 288.110(7) does not require that additional runoff elections be held until the “majority of the
27 unit” standard is met. The Board specifically interprets NAC 288.110(7) as mandating only a
28 single runoff election when the results of a first election are inconclusive, and we emphatically

1 reject any interpretation to the contrary. This Board adopted NAC 288.110(7) and in doing so
2 selected language that states that “if the results [of an election] are inconclusive, the Board will
3 conduct *a* runoff election.” NAC 288.110(7) (emphasis added). The Supreme Court’s 2009
4 order also used similar language: “[w]e conclude that based upon the plain and unambiguous
5 language of NAC 288.110(7) the EMRB must conduct *a* runoff election. We further conclude
6 that NRS 288.160(4) and NAC 288.110(10)(d)’s majority vote requirement is equally applicable
7 to *the* runoff election.” (emphasis added). Had the Board intended through NAC 288.110(7) to
8 self-impose a requirement for an endless cycle of runoff elections, we would have said so. We
9 did not.

10 Further, it appears based upon the Supreme Court’s 2009 order that an additional runoff
11 election made mandatory under this subsection would be subject to the “majority of the unit”
12 standard, which has failed twice now to resolve our good faith doubt as to majority support in
13 this bargaining unit. An interpretation of NAC 288.110(7) as requiring additional mandatory
14 elections would entail the same majority vote counting standards be used and would lock this
15 Board into a potentially perpetual cycle of runoff elections with no end in sight. The concept of
16 stability in labor relations, which is a fundamental objective of the Act, cannot be reconciled
17 with an open-ended process of this sort. Existing doubt as to majority support is not conducive
18 to stability in labor relations and thus the basic premises of the election process are that the
19 election process will have a conclusion, that it will supply an answer to our good faith doubt and
20 that elections can be conducted in a relatively expeditious manner. None of those objectives can
21 be achieved under the “majority of the unit” standard. The employees and employers subject to
22 the Act should not be left under a perpetual cloud of unresolved questions about which
23 organization will actually represent a bargaining unit. The legislature has decreed that they
24 deserve better when it adopted a mechanism for questions of majority support to be definitively
25 resolved by this Board. NRS 288.160(4).

26 NAC 288.110(7)’s requirement for a single runoff election is premised upon the
27 understanding that a singular runoff election should, ordinarily, supply an effective answer to the
28 Board’s good faith doubt in those circumstances where the original election does not do so, and

1 thus its requirement is only for a single runoff election. We also note that an interpretation of
2 our own regulation as requiring never-ending runoff elections would effectively impose an
3 unfunded mandate on this Board that was never intended. Accordingly, we interpret NAC
4 288.110(7) as requiring only a single runoff election where the results of a first election are
5 inconclusive. Having now met that requirement in this case, and having complied with the
6 Supreme Court's order, the Board is not obligated to conduct another runoff election. Doing so
7 under the obligations of the Supreme Court's 2009 order would only repeat the runoff election
8 that has failed to produce a meaningful result in resolving this dispute.

9 It is obvious that the "majority of the unit" standard is incapable of answering our good
10 faith doubt whether any organization enjoys majority support in this case. At this juncture, the
11 Board is faced with two options: either the Board concedes that its good faith doubt can never be
12 resolved and closes this case, leaving that doubt forever unanswered; or else the Board excises
13 the cause of the futility in this case and proceeds under something different than the "majority of
14 the unit" standard. The first option is not a viable option. This Board was created and charged by
15 the legislature with the duty to carry out representation elections and to determine majority
16 support. To walk away from that process at this point after more than a decade of proceedings
17 and two elections without any answer to our good faith doubt would be an affront to our
18 statutory charge under NRS 288.160 and the underlying purposes of the Act. The second option
19 to proceed under a different standard is the only viable option. We find that the ability to hold an
20 election under a standard that will actually produce a meaningful result is essential to carry out
21 our statutory duty to hold elections and to resolve our good faith doubts.

22 Although the Board is not obligated by NAC 288.110(7) to conduct yet another runoff
23 election, it remains within the Board's discretionary authority, as well as implied authority, to do
24 so. While NAC 288.110(7) does not mandate another runoff, neither does that section preclude
25 the exercise of Board discretion to conduct a discretionary second runoff election. A
26 discretionary second runoff election is warranted if it is conducted under a standard that is likely
27 to produce meaningful results. Thus, where it appears that a discretionary runoff election will
28 produce meaningful results that will resolve this Board's good faith doubt, it is within our

1 authority under both NRS 288.160(4) and NAC 288.110(7), as well as our implied authority, to
2 conduct a discretionary second runoff election.

3 But as we stated above, a second runoff election conducted under the same “majority of
4 the unit” standard will not lead to meaningful results, as the repeated failure of that standard in
5 this case plainly indicates. We note that prior to this case, this Board had, from its very
6 origination in 1969, conducted its elections under a simple “majority of votes cast” standard.
7 See, e.g., Laborers’ Int’l Union, Local 169 v. Washoe Medical Center, Item No. 1., EMRB Case
8 No. 1 (1970); Stationary Engineers , Local 39 v. Airport Authority of Washoe County, Item No.
9 133, EMRB Case No. A1-045349 (July 12, 1982); Elko General Hospital v. Elko County
10 Employees Association, Item No. 312, EMRB Case No. A1-045537 (April 1, 1993); City of
11 Mesquite & Teamsters, Local 14, Item No. 434, EMRB Case No. A1-045644 (Sept. 10, 1998);
12 International Union of Operating Engineers, Local No. 3 v. Mount Grant General Hospital, Item
13 No. 473, EMRB Case No. A1-045683 (Sept. 20, 2000). This list of prior election decisions by
14 this Board, which is by no means exhaustive, stands in stark contrast to the experience of this
15 case. These decisions that applied the simple “majority of votes cast” standard demonstrate that
16 under that standard, not only was it possible for Board elections to actually produce meaningful
17 results, but that Board elections did so much more expeditiously than we have experienced thus
18 far in this proceeding.

19 NAC 288.110(10)(d) states that the Board will deem an organization to be the exclusive
20 bargaining agent if the election demonstrates that the organization is “...supported by a majority
21 of employees within the particular bargaining unit.” We now interpret this subsection as
22 permitting the Board to infer majority support of the unit as a whole based upon a majority of
23 votes cast in accord with the well-recognized principle “that those not participating in the
24 election must be presumed to assent to the expressed will of the majority of those voting, so that
25 such majority determines the choice.” N.L.R.B. v. Deutsch Co., 265 F.2d 473, 479 (9th Cir.
26 1959). Following the “majority of votes cast” standard will not only bring the Board in line with
27 the prevailing standard in labor law, as stated in Deutsch Co., it will also bring the Board in line
28 with Nevada’s prevailing standard for elections in general, which bases election results on the

1 number of votes cast. See Nev. Const. Art. 5 § 4. To the extent that our interpretation of NAC
2 288.110(10)(d) conflicts with our prior order in this case at Item No. 520F, we overrule that
3 portion of our prior order. While the Supreme Court's 2009 order does not allow the Board to
4 apply this principle to the mandated runoff election that was just conducted, that order speaks to
5 a single and mandatory runoff election; it does not foreclose application of the principle to a
6 second runoff election conducted entirely at the Board's discretion.

7 As an alternative grounds, even if our interpretation of NAC 288.110(10)(d) is found to
8 be incorrect, the Board also has implied authority, separate and apart from NAC 288.110, to
9 follow the simple "majority of votes cast" standard where the "majority of the unit" standard
10 proves to be inadequate, as it clearly has in this case.

11 The history of this case shows that the "majority of the unit" standard is a failed
12 experiment incapable of any meaningful practical application. A discretionary second runoff
13 election in this case is warranted, but only if it is conducted under the same "majority of votes
14 cast" standard that this Board had used prior to this case. We find that this discretionary second
15 runoff election under the simple "majority of votes cast" standard is calculated to lead to
16 meaningful results, to bring an end to this election process and to finally provide the definitive
17 answer to the question of our good faith doubt that the School District, ESEA, Local 14 and the
18 employees in the bargaining unit all deserve.

19 Based upon the foregoing, and good cause appearing therefore,

20 IT IS HEREBY ORDERED that the results of the runoff election reflected in the Tally of
21 Ballots is certified, as set forth above;

22 IT IS FURTHER ORDERED that the Commissioner shall conduct the discretionary
23 second runoff election as soon as practicable, and as allowed by the budget constraints of the

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1 EMRB. The winner of the discretionary second runoff election shall be determined by the
2 majority of votes cast.

3 DATED the 17th day of February, 2015.

4 LOCAL GOVERNMENT EMPLOYEE-
5 MANAGEMENT RELATIONS BOARD

6 BY: 
7 PHILIP E. LARSON, Chairman

8 
9 BY:
10 BRENT C. ECKERSLEY, ESQ.,
11 Vice-Chairman

12 
13 BY:
14 SANDRA MASTERS, Board Member

STATE OF NEVADA

LOCAL GOVERNMENT EMPLOYEE-MANAGEMENT

RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF)
TEAMSTERS, LOCAL 14, AFL-CIO,)
Petitioner,)

CASE NO. A1-045735

vs.)

NOTICE OF ENTRY OF ORDER

CLARK COUNTY SCHOOL DISTRICT, and)
EDUCATION SUPPORT EMPLOYEES)
ASSOCIATION,)
Respondents.)

EDUCATION SUPPORT EMPLOYEES)
ASSOCIATION,)
Counter Claimant,)

vs.)

INTERNATIONAL BROTHERHOOD OF)
TEAMSTERS, LOCAL 14, AFL-CIO, and)
CLARK COUNTY SCHOOL DISTRICT,)
Counter Respondents.)

To: Education Support Employees Association and their attorneys Michael W. Dyer, Esq., Frank Flaherty, Esq. and Dyer, Lawrence, Flaherty, Donaldson & Prunty

To: International Brotherhood of Teamsters, Local 14 and their attorneys Kristin L. Martin, Esq. and Davis, Cowell & Bowe. LLP

To: Clark County School District and their attorneys Carlos L. McDade, Esq., Office of the General Counsel for the Clark County School District

PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled matter on February 17, 2015. A copy of said order is attached hereto.

DATED this 17th day of February, 2015.

LOCAL GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

By: 

BRUCE K. SNYDER, Commissioner

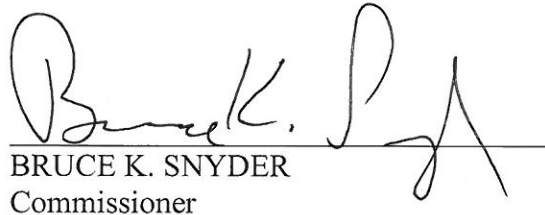
CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Local Government Employee-Management Relations Board, and that on the 17th day of February, 2015, I served a copy of the foregoing ORDER by mailing a copy thereof, postage prepaid to:

Michael W. Dyer, Esq.
Frank Flaherty, Esq.
Dyer, Lawrence, Flaherty, Donaldson & Prunty
2805 Mountain Street
Carson City, NV 89703

Kristin L. Martin, Esq.
Davis, Cowell & Bowe, LLP
595 Market Street, Suite 1400
San Francisco, CA 94105

Carlos L. McDade, Esq.
Clark County School District
5100 W. Sahara Avenue
Las Vegas, NV 89146


BRUCE K. SNYDER
Commissioner

NEVADA LOCAL GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARD

International Brotherhood of Teamsters,
Local 14, AFL-CIO,

Petitioner,

vs.

Case No. A1-045735

Clark County School District and Education
Support Employees Association,

Respondents.

And related counter-claim

FILED

FEB 05 2015

STATE OF NEVADA
E.M.R.B.

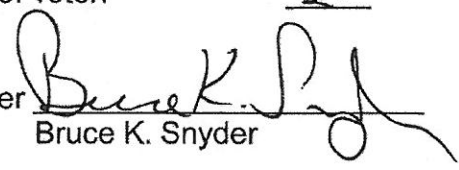
TALLY OF BALLOTS

As Commissioner of the Nevada Local Government Employee-Management Relations Board, I hereby certify that the results of the tabulation of ballots cast in the election held in the above-captioned matter, and concluded on the date set forth below, were as follows:

- | | |
|--|------|
| 1. Number of ballots cast: | 5255 |
| 2. Number of void ballots cast: | 26 |
| 3. Number of ballots challenged based on alleged defect in ballot: | 38 |
| 3(a). Number of challenges sustained: | 18 |
| 3(b). Number of challenges overruled (include in 4 or 5, as appropriate): | 20 |
| 4. Number of valid votes cast for Teamsters Local 14: | 3692 |
| 5. Number of valid votes cast for Education Support Employees Association: | 1498 |
| 6. Total number of valid votes counted (sum of 4 and 5): | 5190 |
| 7. Number of ballots challenged based on alleged ineligibility of voter: | 21 |

Dated: February 3, 2015.

By the Commissioner


Bruce K. Snyder

We acknowledge receipt of a copy of this tally:


Teamsters Local 14

Clark County School District

Education Support
Employees Association

By 

By 

By  Esq.